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OFFICE OF PETITIONS

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Washington, DC 20036-3425

In re Application of
Reppy et al.
Application No. 09/811,538
Patent No.6.984,528 B2
Filed: March 20, 2001

:DECISION GRANTING IN PART PTA
REQUEST FOR RECONSIDERATION

This decision is in response to Applicant's 'REQUEST FOR RECONSIDERATION OF DECISION HOLDING PETITION IN ABEYANCE FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) and 37 CFR 1.702-1/705" filed on February 16, 2006 requesting that the USPTO review the PTA determination at the time of the issuance of the patent from a determination of 287 days to a determination of at least 626 day.

Applicant's letter concerning PTA is **GRANTED.** The Office will adjust the PTA calculation at the time of the mailing of the notice of allowance to reflect a determination of **407 days** of PTA. A copy of the adjusted PTA calculation is provided with this determination.

Applicants are given THIRTY (30) days to reply to this decision. No extensions of time will be granted under 37 CFR 1.136. After the thirty day period, the Office will *sua sponte* issue a certificate of correction reflecting this decision.

Applicants' dispute the reduction of the two miscellaneous incoming letters filed on January 3, 2005 and October 6, 2005 as well as the "312 amendment filed" on May 6, 2004. These reductions amounted to reductions pursuant to 37 CFR 1.704(c)(10) by periods of 120, 97, and 120 days respectively. Applicants assert that the Office erred in assessing a reduction for the 312 amendment because applicant did not file a 312-amendment. Rather, the paper submitted was a petition under 37 CFR 1.705(b). In addition, applicants assert that they also should not have been assessed any delays for the submission of the "miscellaneous incoming letters"on January 3, 2005 or the miscellaneous incoming letter" on October 6, 2005. Applicants assert that these particular papers are status request.

Applicants' arguments are deemed persuasive to the extent herein indicated. As for the one hundred and twenty (120) day reduction for the paper submission on May 6, 2004, applicants are correct that this 120-day reduction is in error. Specifically, a review of the file reveals that the paper in question was not a 312-amendment but a PTA request for reconsideration as asserted by applicants. 37 CFR 1.702(e) makes clear that an application for PTA is not considered a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, this 120-day reduction is in error.

As for the remaining reductions of 120 and 97 days, the Office notes that these reductions were for the submission of written status inquiries. The Office by notice has made clear that written status inquiries after the mail date of the notice of allowance is considered a failure to engage in

reasonable efforts to conclude prosecution of the application. See Clarification of 37 CFR 1.704(c)(10)- Reduction of Patent Term Adjustment for Certain Types of Papers filed After a Notice of Allowance has been Mailed 1247 OG 111 (June 26, 2001). The Office advises applicants to use the private PAIR system to determine the status of the application or in the alternative use the telephone. Accordingly, the reduction for the status inquiries will be maintained.

After the mailing of this decision, the Office will forward this application to the Office of Publications (Certificate of Correction) branch for a prompt issuance of the certificate of correction.

The Office has assessed the $200.00 fee pursuant to 37 CFR 1.18(e). No additional fees are required in deciding this request.

Any questions concerning this decision should be directed to Kery Fries, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.

Kery A. Fries

Kery A. Fries
Senior Legal Advisor,
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

cc: Adjusted PAIR calculation
DRAFT CERTIFICATE OF CORRECTION

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	6,984,528 B2
DATED	:	January 10, 2006
INVENTOR(S)	:	Reppy et al..

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (287) days

Delete the phrase "by 287 days" and insert – by 407 days--

Day : Friday
Date: 3/23/2007

PALM INTRANET

Time: 09:38:57

PTA Calculations for Application: 09/811538			
Application Filing Date:	03/20/2001	PTO Delay (PTO):	661
Issue Date of Patent:	01/10/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	374
Post-Issue Petitions:	0	Total PTA (days):	407
PTO Delay Adjustment:	120		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
75	03/23/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	120		
71.5	12/21/2005	PTA 36 MONTHS	198		
71	01/10/2006	PATENT ISSUE DATE USED IN PTA CALCULATION	463		66
70	12/09/2005	DISPATCH TO FDC			
69	12/09/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
68	12/09/2005	RESPONSE TO AMENDMENT UNDER RULE 312			
67	12/09/2005	TC RETURN TO PUBS			
66	06/04/2004	ISSUE FEE PAYMENT VERIFIED			
65	12/01/2005	RECEIPT INTO PUBS			
64	11/29/2005	PETITION DECISION - DISMISSED			
63	11/17/2005	RECEIPT INTO PUBS			
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61	10/13/2005	RECEIPT INTO PUBS			
60	09/02/2005	PUBS CASE REMAND TO TC			
59	08/15/2005	RECEIPT INTO PUBS			
58	05/06/2004	PETITION ENTERED			
57	03/23/2005	RECEIPT INTO PUBS			
56	01/03/2005	MISCELLANEOUS INCOMING LETTER		120	
55	01/04/2005	RECEIPT INTO PUBS			
54	05/06/2004	AMENDMENT AFTER NOTICE OF ALLOWANCE (RULE 312)		120	
53	09/10/2004	RECEIPT INTO PUBS			
52	06/04/2004	ISSUE FEE PAYMENT RECEIVED			
51	05/18/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
50	05/06/2004	WORKFLOW INCOMING PETITION IFW			

49	03/04/2004	MAIL NOTICE OF ALLOWANCE			
48	03/04/2004	MAIL EXAMINER'S AMENDMENT			
47	03/03/2004	ISSUE REVISION COMPLETED			
46	03/03/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
45	03/03/2004	CASE DOCKETED TO EXAMINER IN GAU			
44	02/26/2004	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
43	02/23/2004	EXAMINER'S AMENDMENT COMMUNICATION			
42	02/23/2004	NOTICE OF ALLOWABILITY			
41	02/06/2004	DATE FORWARDED TO EXAMINER			
40	01/16/2004	AMENDMENT AFTER FINAL REJECTION			
39	02/05/2004	IFW AMENDED CASE PROCESSING COMPLETE			
38	01/16/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
37	02/05/2004	DATE FORWARDED TO EXAMINER			
36	01/16/2004	AMENDMENT AFTER FINAL REJECTION			
35	01/08/2004	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
34	12/17/2003	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
33	10/21/2003	MAIL FINAL REJECTION (PTOL - 326)			
32	10/20/2003	FINAL REJECTION			
31	08/05/2003	DATE FORWARDED TO EXAMINER			
30	07/29/2003	RESPONSE AFTER NON-FINAL ACTION			
29	05/07/2003	MAIL NON-FINAL REJECTION			
28	05/05/2003	NON-FINAL REJECTION			
27	03/14/2003	DATE FORWARDED TO EXAMINER			
26	03/06/2003	APPEAL BRIEF FILED			
25	01/06/2003	NOTICE OF APPEAL FILED		31	18
24	01/06/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	12/30/2002	MAIL ADVISORY ACTION (PTOL - 303)			
22	12/30/2002	ADVISORY ACTION (PTOL-303)			
21	12/20/2002	DATE FORWARDED TO EXAMINER			
20	12/04/2002	AMENDMENT AFTER FINAL REJECTION			
19	10/04/2002	CASE DOCKETED TO EXAMINER IN GAU			
18	09/06/2002	MAIL FINAL REJECTION (PTOL - 326)			
17	09/06/2002	FINAL REJECTION			

16	06/28/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		4	14
15	07/02/2002	DATE FORWARDED TO EXAMINER			
14	06/24/2002	RESPONSE AFTER NON-FINAL ACTION		2	13
13	03/22/2002	MAIL NON-FINAL REJECTION			
12	03/22/2002	NON-FINAL REJECTION			
11	02/17/2002	DATE FORWARDED TO EXAMINER			
10	02/02/2002	RESPONSE TO ELECTION / RESTRICTION FILED			
9	01/15/2002	MAIL RESTRICTION REQUIREMENT			
8	01/14/2002	REQUIREMENT FOR RESTRICTION / ELECTION			
7	11/09/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
6	05/11/2001	PRELIMINARY AMENDMENT			
5	10/19/2001	CASE DOCKETED TO EXAMINER IN GAU			
4	06/12/2001	APPLICATION DISPATCHED FROM OIPE			
3	05/30/2001	CORRESPONDENCE ADDRESS CHANGE			
2	04/12/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/20/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

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